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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/670,781	09/27/2000	Paul C. Daly	4538US	6751
7590	07/13/2005		EXAMINER	
MICHAEL W. HAAS, ESQ. Respironics, Inc 1010 Murry Ridge Lane Murrysville, PA 15668			WEINSTEIN, STEVEN L	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 07/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/670,781	DALY, PAUL C.
	Examiner Steven L. Weinstein	Art Unit 1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 04 May 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-4,6,7,10,12,13,15-17 and 19-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-4,6,7,10,12,13,15-17 and 19-39 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6, 7, 10, 21 and 23-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lazure ('207) in view of applicant's admission of the prior art as evidenced by Blass et al (2/91), Stevens et al (January/February. 1999), Stevens et al (1997) and Frank (2000), further in view of Beckers ('746), Hendricks et al ('242), Bublitz (4,211,338), further in view of Seattle Post-Intelligencer (11/14/90) and Wisconsin State J. (2/6/91, p. 4A), further in view of SanFrancisco Examiner (11/1/92), New Food Products in Japan (10/91) and Food Engineering (51, 8, 43-4, 1979), further in view of Koch et al ('241), Corbic ('594), Lane ('620), Sharkey ('262), Stockdale ('766), Meisner ('489) and Christine et al ('414), essentially for the reasons of record set forth in the Office actions mailed 3/13/02, 7/11/03, 3/31/04 and 1/5/05.

Applicant's admission of the prior art evidences the fact that sugar solutions have been formulated to use as a pain relief/calming medium for infants. Seattle Post Intelligencer and Wisconsin State J. further evidences providing sugar solutions for applicant's intended function (and the application of these solutions to the infant by either syringe or pacifier which have been dipped into the solution). SanFrancisco Examiner, New Food Products in Japan and Food Engineering are relied on as further evidence of single serve medicinal packaging and single serve liquid sugar packaging. Koch et al, Corbic, Lane, Sharkey, Stockdale, Meisner and Christine et al are all relied on as further evidence that the application of single serve or single use cups for all type of products, edible, medicinal and inedible, in all sizes and shapes of cups,

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is notoriously conventional in the art of packaging. New claim 29 recites that the width of the container is sized to receive at "least a portion of an object". Actually, it would appear that the claim would be more accurate if it recited that the width of the mouth of the container is sized to receive at least a portion of an object. This, of course, reads on any size, since claim 29 does not recite what the object is. Claims 30 and 31 recite the object is a pacifier or a syringe, respectively. The arte taken as a whole discloses it was known to provide a sucrose solution containing receptacle wherein a pacifier or syringe is to be dipped into the solution. To modify the combination and provide the cup shaped container with a mouth sufficient to receive a pacifier or syringes for its art recognized and applicants intended function is therefore seen to have been obvious. It is, of course, notoriously well known to provide containers of sufficient size to receive articles to be moved in and out of the containers such as condiment containers for dipping French fries or containers for receiving syringes or droppers.

Claims 12, 13, 15, 16, 22, 17, 19, 20 and 37-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicant's admission of the prior art as evidenced by Blass et al (2/91), Stevens et al (January/February 1999), Stevens et al (1997), Frank (2000), Seattle Post – Intelligencer (11/4/90) and Wisconsin State J (2/6/91 p. 4A), in view of Lazure et al, Beckers, Hendriks et al and Bublitz, further in view of Koch et al, Corbic, Lane, Sharkey, Stockdale, Meisner, Christine et al, further in view of San Francisco Examiner, New Food Products in Japan, and Food Engineering for the reasons given in the Office actions mailed 3/13/02, 7/11/03, 3/31/04 and 1/5/05 and the reasons given above.

All of applicant's remarks filed 5/4/05 have been fully and carefully considered but are not found to be convincing for the reasons of record which are considered to be clearly and fully

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detailed over the course of four Office actions. It is noted that although the Office actions have addressed the concept of individual packaged solutions, the current response errs on page 9 in stating that claim 1 recites, an "individual" packaged solution. Claim 1 only recites a "cup – shaped container". The claim does not recite the size of the cup, the amount of solution contained therein, or whether it is an individual packaged solution. In any case, as noted above even if the claim did include such a recitation the previous Office actions have addressed the issue. Note that only independent claims 12 and 17, recite a single use concept.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L Weinstein whose telephone number is (571) 272-1410. The examiner can normally be reached on Monday-Friday 6:30am to 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

S. Weinstein/af
June 15, 2005

Steve Weinstein
STEVE WEINSTEIN 1761
PRIMARY EXAMINER